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AUG 11 1930

No. 34291

IN THE

SUPREME COURT

OF THE

UNITED STATES

October Term, 1930

No. 63

ABIE STATE BANK, APPELLANT,

vs.

ARTHUR J. WEAVER AS GOVERNOR OF THE STATE OF NEBRASKA; CLARENCE G. BLISS AS SECRETARY OF THE DEPARTMENT OF TRADE AND COMMERCE, APPELLEES;

WILLIS M. STEBBINS AS TREASURER OF THE STATE OF NEBRASKA, APPELLEE;

MARY E. GANDY, JAMES H. COVEY, THEODORE H. BUELT, HUFFMAN & SEYMOUR, INC. (A CORPORATION), LEONARD N. SEYMOUR, JOHN HALBUR AND FRANK H. HEBENSTREIT, APPELLEES.

SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI BY WILLIS M. STEBBINS AS TREASURER OF THE STATE OF NEBRASKA

JAY C. RODGERS, Law Brief Printer, 130 North Fourteenth St., Lincoln, Nebr.

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SUGGESTION OF A DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI BY WILLIS M. STEBBINS AS TREASURER OF THE STATE OF NEBRASKA

May It Please the Court:

Your petitioner, Willis M. Stebbins as Treasurer of the State of Nebraska, suggests that there is a diminution of the record in the above entitled cause, and respectfully moves that this Honorable Court issue its writ of certiorari herein directed to the Supreme Court of the State of Nebraska, commanding that court to certify and send to this court certain papers which are of record in that court in this cause. These papers are particularly described as follows:

"Answer and cross-petition in intervention of Willis M. Stebbins as Treasurer of the State of Nebraska;

"Reply of Abie State Bank on its own behalf and on behalf of the other banks for whom said suit is brought to answer and cross-petition of intervener, Willis M. Stebbis as Treasurer of the State of Nebraska;

"Answer of Abie State Bank on its own behalf and on behalf of the other banks for whom said suit is brought to cross-petition and reply to answer of intervener, Willis M. Stebbins as Treasurer of the State of Nebraska;

"Reply of Abie State Bank for itself and the other banks named in the petition to the answer of Willis M. Stebbins as Treasurer of the State of Nebraska;

"Order of court substituting Arthur J. Weaver as Governor of the State of Nebraska, as defendant, for Adam McMullen, as Governor of the State of Nebraska;

"The motion for judgment by the defendants and intervener, Willis M. Stebbins as Treasurer, and the ruling of the trial court thereon shown at pages 383 and 384 of volume II of bill of exceptions;

"The testimony of Willis M. Stebbins, one of the parties to the suit, shown at pages 689 to 701, inclusive, of volume III, bill of exceptions."

REASONS FOR THIS MOTION

As reasons for and in support hereof, your petitioner shows:

1. This petitioner, Willis M. Stebbins as Treasurer of the State of Nebraska, was a party to this suit in the District Court of Lancaster County, Nebraska, and in the Supreme Court of the State of Nebraska as intervener with defendants, and is an appellee herein. That the foregoing pleadings by which issues were made and joined are omitted from the record brought to this court, and the evidence of this petitioner and other portions of the record aforesaid are omitted. That all of the evidence in the record introduced on behalf of the defendants was likewise offered on behalf of this petitioner.

The judgment appealed from appears at page 58 of the printed record of this court and shows your petitioner as a party to said judgment and the issues adjudicated in his favor thereby. There is one general decree. That the record in this court shows throughout this petitioner as a party thereto.

That your petitioner, Willis M. Stebbins as Treasurer of the State of Nebraska, has over two million dollars of moneys of the State of Nebraska in closed state banks of Nebraska, and to be affected by the result of this suit, and with reference to which issues were made and joined in the pleadings sought to be incorporated in the record

in this court, and the issues thus made were adjudicated in the decision of the Supreme Court of Nebraska.

2. That said pleadings and portions of the record are indispensable to the presentation, hearing and determination of this suit; and especially as to this petitioner.

3. Said pleadings, evidence, motion and court order are a part of the record and are important both on procedure and on the merits.

4. The questions raised in this court in this case require for their proper understanding and decision that said part of the record be before the court.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this honorable court, directed to the Supreme Court of the State of Nebraska, commanding that court to certify and send to this court the papers enumerated herein.

Your petitioner has ordered from the clerk of the Supreme Court of the State of Nebraska a certified transcript of the foregoing parts of the record, and as soon as the same can be obtained, will have them printed and filed herewith. That it has been impractical to secure the same to print and file concurrently with this petition.

C. E. ABBOTT,

C. A. SORENSEN, Attorney General,
Counsel for Willis M. Stebbins as Treasurer of the State of Nebraska, Appellee.

STATE OF NEBRASKA, }
} ss.
LANCASTER COUNTY, }

I, C. A. SORENSEN, Counsel for Willis M. Stebbins as Treasurer of the State of Nebraska in the above entitled cause, do solemnly swear that the facts recited in the foregoing "Suggestion of a Diminution of the Record and Motion for Writ of Certiorari" are true.

C. A. SORENSEN,
Counsel for Willis M. Stebbins.

Sworn to and subscribed before me this 4th day of August, 1930.

(SEAL)

FRIEDA C. BAYERLEIN,
Notary Public in and for
Lancaster County, Nebraska.

JOINDER IN FOREGOING SUGGESTION OF DIMINUTION OF RECORD AND MOTION

Comes now Arthur J. Weaver as Governor of the State of Nebraska, and Clarence G. Bliss as Secretary of the Department of Trade and Commerce, appellees in the above suit, and acknowledge service upon them of a copy of the foregoing "Suggestion of a Diminution of the Record and Motion for a Writ of Certiorari", and acknowledge service of notice of hearing thereon, and these appellees

join in said motion and respectfully represent that said portions of the record are indispensable to a full consideration and determination of this case in this court.

ARTHUR J. WEAVER as Governor of the State of Nebraska, and CLARENCE G. BLISS, as Secretary of the Department of Trade and Commerce.

By C. A. SORENSEN,
Attorney General,
State of Nebraska.